IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1901 OF 2004

IN

SUIT NO.1827 OF 2004

..

Mrs.Pervana Dara Mistry ...Plaintiff

v/s.

Mr.Manuchehr @
Minoo Khodayar Kayani
and another ...Defendants

...

Mr.G.B. Kedia for the Plaintiff.

Mr.Vinit Kulkarni for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 29TH APRIL,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff for attachment before judgment. Suit of the Plaintiff is based on the cheque which was issued by the Defendant. The Plaintiff has averred that the cheque was dishonoured. Criminal proceedings were lodged for dishonour of the cheque against the Defendant. Defendant has been convicted. Appeal is pending. In paragraph 4 of the affidavit filed in support of the Notice of Motion, the Plaintiff has stated that the Defendant is heavily indebted and he is disposing of his properties. The Plaintiff has given details of the properties in relation to which he claims an order of attachment before judgment. In the affidavit in reply the Defendant states that several of those properties have been disposed of. But not a single document is produced by the Defendant. Obviously a statement made on oath about contents of a document, without producing the

document itself cannot be accepted.

2. After perusing the record, it appears that the Defendant is heavily indebted and he is trying to dispose of his properties, therefore, there is no option but to make an order of attachment before judgment.

3. Notice of Motion is, therefore, granted in terms of prayer clause (a). Period of two weeks is fixed for making deposit. Failure of the Defendant in depositing the amount will result in grant of this Notice of Motion in terms of prayer clause (b).

Till the amount is deposited or attachment takes effect, ad-interim order in terms of prayer clause (c) shall operate.

...